Supreme Court, U.S.
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No. 991581

IN THE

Supreme Court of the United States

October Term, 2000

MORTADA HIZAM,

Petitioner,

vs.

HUSSEIN MOSSA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE STATE OF NEW YORK.

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW.

Are racial and ethnic themes suggestive of collusion and fraud in a civil trial consistent with the mandates of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution?

TABLE OF CONTENTS.

	Page
QUESTION PRESENTED FOR REVIEW	i
TABLE OF AUTHORITIES	v
REPORTS OF OPINIONS BELOW	1
JURISDICTIONAL STATEMENT	1
CONSTITUTIONAL PROVISION	1
STATEMENT OF THE CASE	2
Procedural History	2
Statement of Facts	3
REASONS FOR GRANTING THE WRIT:	
Racial and Ethnic Themes are an Affront To the Court, to the Constitution and Mandate Reversal	5
CONCLUSION	7

APPENDIX:

Order of the Court of Appeals for the State of New York, Dismissing the Appeal, Dated January 6, 2000 ..... A1

Decision of the Court of Appeals for the State of New York, Dismissing the Appeal, Dated January 6, 2000 ..... A2

Order of the Supreme Court of the State of New York, Appellate Division, Fourth Judicial Department, Entered October 1, 1999 ..... A3

Memorandum Decision of the Supreme Court of the State of New York, Appellate Division, Fourth Judicial Department, Filed October 1, 1999..... A4

Judgment of the State of New York Supreme Court, County of Erie, Granted April 8, 1998 and Filed April 15, 1998 ..... A5

TABLE OF AUTHORITIES.

Page

CASES:

Abren v. Manhattan Plaza Asso., 124 AD2d 526, 625 NYS2d 234 (2nd Dept., 1995)..... 6

Batson v. Kentucky, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed. 69 (1986)..... 5

Clark v. New York City Transit Authority, 174 A.D.2d 580, 446 NYS2d 318 (1st Dept., 1982)..... 5

Graham v. Murphy, 135 AD2d 326, 526 NYS2d 414 (3rd Dept., 1988)..... 6

LeBlanc v. American Honda Motor Co., Inc., 141 N.H. 579, 688 A2d 556 (1997) 6

New York Cent. R. Co. v. Johnson, 279 U.S. 310, 49 S.Ct. 300, 73 L.Ed. 706 (1929) 5,6

Ostrowski v. Apex Marine Corp., 123 AD2d 257, 506 NYS2d 164 (1st Dep., 1986)..... 6

Pappas v. Middle Earth Condominium Asso., 963 F.2d 534 (Second Cir., 1992)..... 6

People v. Bolling, 79 NY2d 317, 582 NYS2d 950, 591 NE2d 1136 (1992) 5

Standard Fire Ins. Co. v. Reese, 584 S.W.2d 240 (1990)..... 6

Texas Employeers Ins. Ass'n v. Guerrero, 800 S.W.2d 859 (1990)..... 5,6

CONSTITUTION:

Amendment XIV..... 1,5

REPORTS OF OPINIONS BELOW.

Hizam v. Mossa, _____ NY2d _____, _____ NYS2d _____ (2000).

Hizam v. Mossa, _____ AD2d _____, 695 NYS2d 854 (4th Dept. 1999).

JURISDICTIONAL STATEMENT.

This Court has jurisdiction over this motion and the appeal pursuant to 28 U.S.C. §2101(e) in that the action originated in the New York Supreme Court, the Judgment appealed from dated and entered on April 3, 1998, has finally determined the action of Plaintiff, MORTADA HIZAM versus HUSSEIN MOSSA, Defendant; the Order is appealable as it directly involves the construction and application of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States. The Appellate process in the State of New York has been exhausted as the Judgment was affirmed by the Appellate Division, Fourth Judicial Department on October 1, 1999 and the Notice of Appeal to the New York Court of Appeals dismissed on January 6, 2000.

CONSTITUTIONAL PROVISION.

This case involves the interpretation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution:

> "No State . . . shall deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE.

Procedural History.

This is a negligence case involving an Arabic immigrant from Yemen, MORTADA HIZAM, who fell from a ladder on September 10, 1995. The property owner and individual who abandoned steadying the ladder was another Arab, the Defendant, HUSSEIN MOSSA. Suit was commenced by filing the Summons and Complaint on November 9, 1995. Discovery was completed and the case taken to trial and a jury verdict of "no cause" rendered on June 18, 1997. Following post-trial motions, which were denied by the trial court, the case was appealed in a timely manner to the Appellate Division, Fourth Department for the State of New York. The case was argued before the Appellate Division and a Decision and Order entered on October 1, 1999. These documents were served upon your deponent on October 5, 1999. Thereafter a Notice of Appeal to the New York Court of Appeals was filed on October 18, 1999. Notice of Appeal was dismissed for lack of a "substantial" Constitutional question on January 6, 2000.

STATEMENT OF FACTS.

Defense counsel made race and ethnic heritage the issue before an all white jury. This was the frequently repeated theme initiated in the openings and emphasized in the summation. In his opening statement defense counsel made sure the jury was fully informed as to the important racial issues in the case when he advised that "Any of you who know anything about the City of Lackawanna know that there is a large Arab community . . . they seem to take care of one another." "Mr. Hizam is trying to make a better life for himself in the United States than maybe he had in Yemen and I commend him for trying to learn the English language so that he can become a productive member of society over here."

Counsel then spoke briefly about the facts of the case where a stepladder fell sideways onto a driveway on September 10, 1995. The Plaintiff-Movant, MORTADA HIZAM sustained a severely fractured wrist. The fall from the ladder came about when the Defendant-Respondent, HUSSEIN MOSSA, who had been steadying the ladder walked away unannounced thereby rendering the ladder unsupported and unsteady. Though it is apparent from the names of the parties, counsel nevertheless spoke again about the parties "Arab heritage" and how those people "truly had a sense of community".

He talked about goals by mentioning that "Dreams are great. In jury selection we talked about it, some of your dreams." You must be careful however about "that motive part about having dreams." "I implore you . . . to . . . exclude any sympathy that you think engenders as a result of someone's dreams."

After establishing during the trial that the Plaintiff MORTADA HIZAM was in fact an Arab from Yemen, counsel began his summation by immediately

reintroducing and reinforcing the above racial themes. The jury was reminded of "the plaintiff's dreams," "that plaintiff had a life in Yemen" and that he had been a "teacher in Yemen." The suggestion, of course, is that he should have stayed in Yemen. "The plaintiff came to the United States for purposes of bettering his life."

The Jury was also reminded that "in the City of Lackawanna there is a large Arab community, and fairly cohesive." And they were told not to forget about "the plaintiff's dreams." And, in case the jury had missed it, they were told to remember "Mr. HIZAM, being a person from Yemen." And that this "person . . . would some day be applying for citizenship to this country."

Counsel continued with "what Mr. HIZAM is asking for is a million dollars . . . He has asked for one million dollars for his injuries . . . it certainly can't rest upon the dreams of MORTADA HIZAM and in making his life better here in the United States."

Finally then counsel reached and discussed briefly the merits of the case. However, the racial and ethnic themes and arguments were quickly returned to with "Plaintiff was a science teacher in his former country; . . . he is attenidng . . . the International Institute so that he can . . . learn the English language, become a productive member of society." The innuendo is that, obviously, he's not one of us, he is a foreigner, he cannot speak "our" language and certainly is not a productive member of our society. Had he simply stayed where he belonged, he had a job and could have supported himself and his relatives. We "talked about the dreams that this plaintiff had . . . the complaint in this action was filed less than two months later . . . you must look at what the plaintiff's motivation might be in this case. Is this a part of the plaintiff's dream to assimilate himself into the American populace?" "[O]nly you can make that decision."

REASONS WHY LEAVE TO APPEAL SHOULD BE GRANTED.

Racial and Ethnic Themes are an Affront To the Court, to the Constitution and Mandate Reversal.

The law of the United States of America and in the State of New York is that racial bias is not to be tolerated in any form or context. *Batson v. Kentucky,* 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed 69 (1986); *People vs. Bolling,* 79 N.Y.2d 317, 582 N.Y.S.2d 950, 591 N.E.2d 1136. *U.S. Constitution,* 14th Amendment. The above words and phrases from the defense attorney's opening and summation are neither fictional nor exaggerated. They are literal quotations from the trial. The arguments were suggestive of collusion and fraud by foreigners, "Arabs", who "take care of each other" and are not "productive members of society". They are, in effect, a burden on American society and implicitly the jury themselves. We all have to support them and their families while they try to learn English and maybe eventually find a job. "The quoted remarks of respondents' counsel so plainly tended to excite prejudice as to be ground for reversal, is, we think not open to argument." *New York Cent. R. Co. v. Johnson,* 279 U.S. 310, 49 S.Ct. 300, 73 L.Ed 706 (1929).

"To permit the sophisticated ethnic plea while condemning those that are open and unabashed would simply reward counsel for ingenuity in packaging . . . lawyers have no right to undermine the ethnic harmony of society simply to win a lawsuit." *Texas Employeers Ins. Ass'n v. Guerrero,* 800 S.W2d 859 (1990). "The statements and their inferences were a conscious and deliberate effort to divert the jurors attention from the issues to be determined." *Clark vs. New York City Transit Authority,* 174 A.D.2d 580, 446 N.Y.S.2d 318 (1st Dept. 1982). "The public interest requires that the court on its own motion, as is its power and duty,

protect suitors in their right to a verdict, uninfluenced by the appeals of counsel to passion or prejudice." *New York Cent. R. Co. v. Johnson, supra; Graham v. Murphy,* 135 A.D.2d 326, 526 N.Y.S.2d 414 (3rd Dept. 1988); *Ostrowski vs. Apex Marine Corp.,* 123 A.D.2d 257, 506 N.Y.S.2d 164 (1st Dept. 1986); *Abren vs. Manhattan Plaza Asso.,* 124 A.D.2d 526, 625 N.Y.S.2d 234 (2nd Dept. 1995).

For example, in a case against Honda Motor Company, opposing counsel made two brief remarks about how their case was "not about Pearl Harbor or the Japanese prime minister . . . but about corporate greed." Just those two remarks in the form of a disclaimer were deemed "so prejudicial as to mandate reversal." *LeBlanc v. American Honda Motor Co., Inc.,* 141 N.H. 579, 688 A2d 556 (1997). Where comments are so prejudicial as to deprive a litigant of a fair trial, the verdict should be set aside. "Appeals to racial prejudice are one of the exceptional kinds of argument that are considered incurable." *Texas Employeers Ins. Ass'n v. Guerrero, supra, c.f. Standard Fire Ins. Co. v. Reese,* 584 S.W.2d 240 (1990).

In a like manner, "no one suggests that appeals to ethnic prejudice should be treated differently from racial ones." *Texas Employeers Ins. Ass'n v. Guerrero, supra.* The appeals by counsel here were all of the above. They were a combination of pleas to racial, ethnic and regional biases. References to "Arabs" and "Yemen", "Arab heritage" and "Arab community" were "us-against-them" appeals. Such attempts create feelings of hostility against foreigner applicants, *Pappas v. Middle Earth Condominium Asso.,* 963 F.2d 534 (Second Cir., 1992) "Such remarks . . . tending to create an atmoshpere of hostility toward . . . another section of the country [or world] have been so often condemned . . . as to require no comment." *New York Cont. R. Co. v. Johnson, supra.*

CONCLUSION.

It is respectfully requested that this Court grant the petition for a writ of certiorari in this matter.

DATED: Buffalo, New York
March 25, 2000

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APPENDIX

Order of the New York State Court of Appeals, Dated January 6, 2000.

STATE OF NEW YORK

COURT OF APPEALS

At a session of the Court, held at Court of Appeals Hall in the City of Albany on the Sixth day of January 2000.

PRESENT, HON. JUDITH S. KAYE,
Chief Judge, presiding

Mo. No. 1504 SSD 78

MORTADA HIZAM,

Appellant,

v.

HUSSEIN MOSSA,

Respondent.

The appellant having filed notice of appeal in the above title and due consideration having been thereupon had, it is

ORDERED, that the appeal be and the same hereby is dismissed without costs, by the Court *sua sponte,* upon the ground that no substantial constitutional question is directly involved.

STUART M. COHEN
Stuart M. Cohen
Clerk of the Court

Decision of the New York State Court of Appeals, Dated January 6, 2000.

STATE OF NEW YORK

(SEAL) COURT OF APPEALS

Stuart M. Cohen
Clerk of the Court

Clerk's Office
Albany, New York 12207-1095

Mo. No. 1504 SSD 78

MORTADA HIZAM,

Appellant,

v.

HUSSEIN MOSSA,

Respondent.

DECISION January 6, 2000

Appeal dismissed without costs, by the Court *sua sponte,* upon the ground that no substantial constitutional question is directly involved.

Order of the Supreme Court of the State of New York, Appellate Division, Fourth Judicial Department, Entered October 1, 1999.

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

1262

PRESENT: DENMAN, P. J., GREEN, HAYES, PIGOTT, JR., AND SCUDDER, JJ.

CA 99-56

MORTADA HIZAM,
Plaintiff-Appellant,

v.

HUSSEIN MOSSA,
Defendant-Respondent.

Mortada Hizam having appealed to this Court from the judgment of the Supreme Court, entered in the Erie County Clerk's Office on April 15, 1998, and said appeal having been argued by J. Michael Hayes of counsel for plaintiff-appellant, Robert E. Gallagher, Jr., of counsel for defendant-respondent, and due deliberation having been had thereon,

It is hereby ORDERED that the judgment so appealed from be and the same hereby is unanimously affirmed with costs.

Memorandum that is hereby made a part hereof.

Entered: October 1, 1999 CARL M. DARNALL, Clerk

Memorandum Decision of the Supreme Court of the State of New York, Appellate Division, Fourth Judicial Department, Filed October 1, 1999.

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

(1262) CA 99-56. (Erie Co.) — MORTADA HIZAM, PLAINTIFF-APPELLANT, V. HUSSEIN MOSSA, DEFENDANT-RESPONDENT. — Judgment unanimously affirmed with costs. Memorandum: Plaintiff appeals from a judgment in favor of defendant in this negligence action. Plaintiff contends that the jury verdict is against the weight of the evidence and that defendant was negligent as a matter of law. We disagree. "Where varying inferences from the evidence are possible, the issue of negligence is left to the jury" (*Harris v Armstrong*, 97 AD2d 947, *affd* 64 NY2d 700, citing *Eddy v Syracuse Univ.*, 78 AD2d 989, 990, *lv denied* 52 NY2d 705). Here, defendant was holding a ladder for plaintiff but left his position temporarily to retrieve a tool. Plaintiff fell during defendant's absence. The jury was entitled to conclude that defendant was not negligent.

Plaintiff further contends that he was deprived of a fair trial because of improper statements made by defendant's attorney. The alleged improper statements were in fact innocent references to the ethnic heritage of the parties and, in any event, were fair response to statements regarding plaintiff's recent immigration made by plaintiff's attorney in his opening statement. (Appeal from Judgment of Supreme Court, Erie County, LaMendola, J. - Negligence.) PRESENT: DENMAN, P.J. GREEN, HAYES, PIGOTT, JR., AND SCUDDER, JJ. (Filed Oct. 1, 199.)

Judgment of the State of New York Supreme Court, County of Erie, Granted April 8, 1998 and Filed April 15, 1998.

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

Index No. 95-8593

Filed in the Erie County Clerk's Office on:
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ERIE COUNTY
CLERK'S OFFICE

MORTADA HIZAM,

Plaintiff,

vs.

HUSSEIN MOSSA,

Defendant.

JUDGMENT

This action, having duly come on for trial before the Hon. Rose D. LaMendola, J.S.C., a Justice for this Court, and a jury, at a Trial Term of the Supreme Court held in and for the County of Erie at the Erie County Courthouse, Buffalo, New York, and the Plaintiff MORTADA HIZAM having appeared in person by his attorney, J. Michael Hayes and the Defendant, HUSSEIN MOSSA, having appeared in person by his attorney, Kenny, Kanaley, Shelton, Notaro, Liptak & Laing, Robert E. Gallagher, Jr., of Counsel, and the

issues having been duly tried and the jury having rendered a verdict on June 18, 1997 in favor of the Defendant, HUSSEIN MOSSA.

NOW, on motion of Kenny, Kanaley, Shelton, Notaro, Liptak & Laing, attorneys for the Defendant, it is

ORDERED, ADJUDGED AND DECREED that the Defendant, HUESSEIN MOSSA, of 167 Holland Avenue, Lackawanna, New York have judgment against the Plaintiff, MORTADA HIZAM of P.O. Box 1203, Buffalo, Lackawanna, New York for costs and disbursements as taxed in the sum of One Thousand Forty Dollars ($1,040.00), and have execution therefore.

Judgment signed and entered this 3rd day of April (~~March~~), 1998. R.D.L.

ROSE D. LaMENDOLA
Rose D. LaMendola
J.S.C.

GRANTED
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BOB ADAMSKI
COURT CLERK

ENTER:

(2)
Supreme Court, U.S.
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No. 99-1581

IN THE

Supreme Court of the United States

October Term, 1999

MORTADA HIZAM,

Petitioner,

vs.

HUSSEIN MOSSA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE STATE OF NEW YORK.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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COUNTERSTATEMENT OF ISSUES PRESENTED

1. Does petitioner present a substantial Constitutional question for consideration by the Court?

2. Did the trial courts and state appellate courts abuse their discretion in refusing to set aside the verdict and order a new trial?

3. Was petitioner Denied Equal Protection Under the Law?

TABLE OF CONTENTS.

	Page
COUNTERSTATEMENT OF ISSUES PRESENTED	i
TABLE OF AUTHORITIES	iv
COUNTERSTATEMENT OF THE CASE AND FACTS	1
REASONS FOR DENYING THE WRIT:	
I. This Court Does Not Have Jurisdiction to Rectify An Abuse of the Trial Court's Discretion	3
II. The Trial Court Did Not Abuse Its Discretion	4
III. Petitioner Was Not Denied Equal Protection Under the Law	5
CONCLUSION	7

TABLE OF AUTHORITIES.

Page

CASES:

Batson v. Kentucky, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed. 69 (1986) 3

Classen v. Ashkinazy, 258 A.D.2d 863, 686 N.Y.S.2d 164 (3d Dept. 1999) 4

Driscoll v. Akron Fire Co., Inc., 251 A.D.2d 1042, 675 N.Y.S.2d 264 (4th Dept. 1998) .. 4

Forrestal, v. Magendantz, 848 F.2d 303 (1st Cir. 1988) 4

Hizam v. Mossa, 265 A.D.2d 873, 695 N.Y.S.2d (4th Dept. 1999) *lv. denied* 94 N.Y.2d. 757, 725 N.E.2d 1094, 704 N.Y.S.2d (1999). 5

LeBlanc v. American Honda Motor Co., Inc., 141 N.H. 579, 688 A.2d 556 (1997) 4

Sioux City Bridge Co. v. Dakota County, 260 U.S. 441, 445 43 S.Ct. 190, 67 L.Ed. 340 (1923) 6

Sunday Lake Iron Co. v. Township of Wakefield, 247 U.S. 250, 352, 38 S.Ct. 495, 62 L.Ed. 1154 (1918). 6

People v. Bolling, 79 N.Y.2d 317, 582 N.Y.S.2d 950, 591 N.E.2d 1136 (1992) 3

Torrado v. Lutheran Medical Center, 198 A.D.2d 346, 603 N.Y.S.2d 325 (2d Dept. 1993) 4

Village of Willowbrook v. Olech, 120 S.Ct. 1073 (2000). 6

Vacco vs. Quill, 521 U.S. 793, 117 S.Ct. 2293, 138 L.Ed. 834 (1997) 6

COUNTERSTATEMENT OF THE CASE AND FACTS

This is a personal injury action in which the petitioner allegedly sustained injuries as a result of a fall from a ladder. Respondent had hired petitioner to paint his house. Petitioner had ascended a ladder and was helping respondent clean the gutters on the house. Respondent had gone into his garage to obtain additional tools when petitioner fell off the ladder. Thereafter, suit was commenced in the Supreme Court of the State of New York, Erie County, and discovery was conducted. The case proceeded to trial and the jury rendered a unanimous verdict in favor of Respondent. Petitioner made a post-trial motion to set aside the verdict, which was denied. Petitioner appealed, contending that the verdict was contrary to the weight of the evidence and that ethnic references during the trial constituted fundamental error. The Appellate Division, Fourth Judicial Department, denied the appeal and affirmed the verdict, and petitioner sought leave to appeal to the Court of Appeals of New York. Leave was denied.

Both petitioner and respondent are of Arab descent. During the trial of this case, there were several references to petitioner's, as well as respondent's, ethnic heritage. However, as petitioner failed to note, it was petitioner's counsel who introduced the ethnic theme during his opening statement, noting that his client had recently immigrated from Yemen seeking "hopes and dreams, and opportunities that this country provides and affords us." In the first moments of petitioner's opening statement, counsel stated:

> And in our society, too, we have privileges, and we have hopes, and we have dreams, and we have goals. My client, Mr. Hizam, who's sitting over there, and his wife, okay, he's from Yemen. And you'll hear that. . . . His wife . . . was born in Buffalo, but I

> think that he met her over there, and he's been here now working on three years. And he's here probably for the same reason that our ancestors came here, for purposes, hopes, and dreams, and opportunities that this country affords us. . . .
>
> So, Mr. Hizam came here two, two and a half, maybe three years ago. Gave up the security of his homeland, his family, came here. . . . Spoke no English. . . . You'll hear that he had a college degree, in Yemen, that he was a teacher there. . . . If you don't speak English, you're going to have a little trouble getting a teaching job. . . . He comes here taking odd jobs. . .doing what he can to support his family, his children, and get into our society.

Reference was made to the fact that when petitioner left his country, he did not speak any English and that his inability to speak English hampered his efforts to obtain employment when he came to this country. These issues were brought out by counsel on direct examination of petitioner, including his life in Yemen, immigration, inability to speak English, attempts to learn English, and his plans to take the United States citizenship examination. Although respondent's counsel also made reference on several occasions to the parties' ethnicity, the record reveals that these references and comments were made in direct response to observations made by petitioner's counsel in opening argument and appeal to petitioner's attempts to make a better life for himself and achieve "the American Dream." Moreover, respondent's counsel's references to regionalism and ethnicity, to which petitioner did not object during trial, were not derogatory but rather complimentary and no improper motive shoud be attributed to these comments.

Petitioner fails to note that it was petitioner's counsel who belabored the issue of petitioner's ethnicity. He can hardly be heard now to complain because the conclusion of the trial was not in his favor.

REASONS FOR DENYING THE WRIT

Even if references to ethnicity and regionalism during the trial could be interpreted as improper attempts to incite prejudice, there is no Constitutional issue which warrants granting the writ.

I. This Court Does Not Have Jurisdiction to Rectify An Abuse of the Trial Court's Discretion.

Review on writ of certiorari, like a motion to set aside a verdict as against the weight of the evidence, is a matter of judicial discretion. Rule 10 of the Rules of the Supreme Court of the United States provides that a writ of certiorari will only be granted for compelling reasons. No compelling issue has been presented for consideration by the Court. The failure to rectify any alleged improper conduct by use of a curative instruction to the jury or by setting aside the verdict does not imply an abuse of power which would give rise to a violation of the Fourteenth Amendment. It is clear that a claim for denial of Equal Protection will not lie based upon a single incident in which a trial court allegedly abused its discretion. A violation of the Equal Protection Clause relates to an abuse of power by the State to the detriment of a protected class, as illustrated by *Batson v. Kentucky,* 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986) and *People v. Bolling,* 79 N.Y.2d 317, 582 N.Y.S.2d 950, 591 N.E.2d 1136 (1992), the cases cited by petitioner. No such pattern of conduct on the part of the New York Court System has been alleged, nor is one supported by the facts taken in a light most favorable to petitioner. In fact, the trial court was not presented with the issue of alleged improper ethnic references until post-trial motions. The allegedly improper references were not objected to during the trial and no curative charge to the jury was requested. Therefore, no Constitutional question has been presented for review by the Court.

II. The Trial Court Did Not Abuse Its Discretion.

There is no question that appeals to prejudice are an affront to our system of justice. Nevertheless, references to ethnicity, race or regionalism, standing alone, do not establish an appeal to prejudice. "When a racial or ethnic appeal has been made, the trial court 'must examine, on a case-by-case basis, the totality of the circumstances, including the nature of the comments, their frequency, their possible relevancy to the real issues before the jury, the manner in which the parties and the court treated the comments, the strength of the case (e.g. whether it is a close call), and the verdict itself.' " *LeBlanc v. American Honda Motor Co., Inc.*, 141 N.H. 579, 688 A.2d 556 (1997), *quoting Forrestal, v. Magendantz,* 848 F.2d 303, 309 (1st Cir. 1988). One of the circumstances to be considered is whether the allegedly improper comments diverted the jury's attention from the issues to be determined with respect to liability as to deprive the litigants of a fair trial. *Torrado v. Lutheran Medical Center,* 198 A.D.2d 346, 603 N.Y.S.2d 325 (2d Dept. 1993). A new trial is not warranted where the comments are not inherently offensive in nature nor divert the jury's attention from the material issues in the case. *Classen v. Ashkinazy,* 258 A.D.2d 863, 686 N.Y.S.2d 164 (3d Dept. 1999); *Driscoll v. Akron Fire Co., Inc.,* 251 A.D.2d 1042, 675 N.Y.S.2d 264 (4th Dept. 1998).

In this case, the comments to which petitioner objects were not offensive in nature nor were they an appeal to prejudice. In fact, defense counsel specifically countenanced the jury that "opening statements are not evidence," and later admonished them "to be critical thinkers. You are not entitled to take emotion into consideration when you consider the evidence and make your decision." As the New York appellate court noted in its decision denying petitioner's appeal, "The alleged

improper statements were in fact innocent references to the ethnic heritage of the parties and, in any event, were fair response to statements regarding plaintiff's recent immigration made by plaintiff's attorney in his opening statement." *Hizam v. Mossa*, 265 A.D.2d 873, 695 N.Y.S.2d (4th Dept. 1999), *lv. denied* 94 N.Y.2d 757, 725 N.E.2d 1094, 704 N.Y.S.2d (1999). The court also determined that the jury's verdict was not contrary to the weight of the evidence. Therefore, there was no abuse of discretion by the trial court in refusing to set aside the verdict.

III. Petitioner Was Not Denied Equal Protection Under the Law.

Petitioner contends that due to defense counsel's appeal to ethnic prejudice, petitioner was denied a fair trial. As a factual matter, both parties to the lawsuit are of the same ethnic origin and counsel for both parties made references to same. Implicit in the petitioner's contention that the conduct of the trial of this case violated the Equal Protection Clause is the assertion that petitioner was denied trial by an impartial jury. It seems antithetical to argue prejudice and partiality when the references to which petitioner now objects applied equally to both petitioner and respondent, and when similar, innocuous observations were made by counsel for both sides. In fact, counsel in this case went so far as to explore with potential jurors whether they would be influenced or biased based upon the parties' ethnic origin or immigration status as defense counsel reminded the jury during closing argument, noting, "During jury selection, we also asked you whether you had any strong feelings about lawsuits, and whether you had any feelings as to whether Mr. Hizam, being a person from Yemen, who ... would some day be applying for citizenship to this country, sought the redress of this

court to right what he perceived to be a wrong." Contrary to petitioner's assertions, additional measures were taken to assure that Mr. Hizam would be afforded a fair trial by an impartial jury and the references to which petitioner objects were made for that purpose: to level the playing field and respond to petitioner's counsel's comments.

The intent of the equal protection clause of the Fourteenth Amendment to the constitution is to ensure that all citizens are protected from "intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents." *Village of Willowbrook v. Olech,* 120 S.Ct. 1073 (2000), *quoting Sioux City Bridge Co. v. Dakota County,* 260 U.S. 441, 445, 43 S.Ct. 190, 67 L.Ed. 340 (1923), *quoting Sunday Lake Iron Co. v. Township of Wakefield,* 247 U.S. 350, 352, 38 S.Ct. 495, 62 L.Ed. 1154 (1918). The equal protection clause requires that states treat like cases alike but permits them to afford disparate cases different treatment. *Vacco v. Quill,* 521 U.S. 793, 117 S.Ct. 2293, 138 L.Ed. 834 (1997). The mandates of the equal protection clause forbid the state, including employees, agents and officers, from wielding its power in a discriminatory manner. There was no such abuse of power in this case. The New York courts did nothing to afford disparate treatment to petitioner in any sense. Therefore, petitioner was not denied equal protection under the law and has presented no constitutional issue for consideration by this Court.

CONCLUSION

For all of the foregoing reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

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